

REMARKS

Claims 38-66 and 69-77 are pending in the present application. Claims 1-37, 67 and 68 were canceled by a previous Amendment. Claims 1 and 72 are independent. Reconsideration of this application, as amended, is respectfully requested.

Priority Under 35 U.S.C. § 119

The Examiner has not acknowledged Applicant's claim for foreign priority under 35 U.S.C. § 119, and receipt of the certified priority document. This application is a National Phase Application of PCT/NL03/00947, and the certified copies of the priority documents were filed in the PCT Application. Also, both priority documents appear in the U.S. Patent Office PAIR system. **Acknowledgment thereof by the Examiner in the next Office Action is respectfully requested.**

Information Disclosure Citation

Applicants thank the Examiner for considering the reference supplied with the Information Disclosure Statements filed June 30, 2005 and July 15, 2008, and for providing Applicants with an initialed copy of the PTO-SB08 form filed therewith.

Drawings

Since no objection has been received, Applicants assume that the drawings are acceptable and that no further action is necessary. Confirmation thereof in the next Office Action is respectfully requested.

Restriction Requirement

The Examiner has acknowledged the Restriction Requirement, and has withdrawn claims 39-41, 48-57, 59-66 and 69-77 from consideration. In the Examiner's reply to the Applicants traversal of the Restriction Requirement, the Examiner indicates that the arguments are directed to U.S. Restriction practice and not unity of invention practice. In reply, Applicants point out the

fact that independent claims 38 and 72 both include the special technical feature of controlling the number of birds that are transferred per time unit to the conveying station by the unloading station or to the connecting station by the conveying station in order to reduce fluctuations in the stream of poultry.” In view of this, there is unity of invention between the method and device claims in the present application. To the extent the Examiner does not believe that the method and device claims include the same special technical feature, or that the special technical feature is not patentable, Applicants reserve the right to amend the method and device claims to include the same special technical feature.

With regard to the Election of Species Requirement, as the Examiner has mentioned, the present application is a National Phase of a PCT. In view of this, unity of invention practice and not U.S. Restriction practice is appropriate. With that being said, the Examiner has used U.S. Election of Species practice, which is not appropriate for unity of invention practice. For this reason alone, it is requested that the Examiner withdraw the Election of Species Requirement and examine all of the claims in the present application. If the Examiner believes that U.S. Election of Species practice is appropriate for this application, it is requested that the Examiner clearly explain the basis for the use of Election of Species practice in this National Phase application.

To the extent Election of Species practice is appropriate, Applicants submit that the Examiner’s Election of Species Requirement is improper, for the reasons mentioned in the response filed on September 14, 2009. It is noted that the Examiner has not addressed any of the arguments presented against the Election of Species Requirement, but has simply withdrawn many of the dependent claims from consideration without explanation. It is therefore requested that the Examiner address the arguments presented in the September 14, 2009 reply. The arguments are re-presented below for the Examiner’s convenience.

The Examiner has also required an election within the Group I. Applicants respectfully submit that this Election of Species Requirement is incorrect. **However, Applicants hereby elect Species IB with traverse. Claims 38-66 and 69-71 read on the elected species, because none of these claims are mutually exclusive (for the reasons explained below).**

It is believed that all of claims 38-66 and 69-71 should be examined by the Examiner, and therefore all of these claims have been indicated in the above claim set as being elected.. However, if Applicants must elect only claims that are directed to a control device linked to a conveyor device to convey poultry at a conveying speed, then Applicants elect Species IB, consisting of claims 38, 42-47 and 58 with traverse.

The Office Action states that Group I contains seven patentably distinct species, Species IA-IH. Applicants respectfully traverse this Election of Species requirement.

First, the alleged species are stated in terms of claims (see pages 2 and 3 of the Office Action), not embodiments. This is improper because MPEP §806.04(e) clearly points out that species are definitions of inventions and that *claims are never species*.

Second, it is fundamentally improper to require election of species for dependent claims 39-66 and 69-71. In this regard, the attention of the Examiner is directed to MPEP § 806.04(f) which points out that claims to be restricted to species must be mutually exclusive, i.e., for claims to be properly restricted to different species, those claims must recite the mutually exclusive characteristics of such species. However, each of claims 39-66 and 69-71 recites all of the features of generic claim 38 and, claims 39-66 and 69-71 are not mutually exclusive. Accordingly, the election of species with respect to claims 39-66 and 69-71 is improper.

In other words, claims 39-66 and 69-71 could be rewritten to be dependent from each other, as they are not inconsistent with each other.

In view of the above, both the restriction requirement and the election of species requirement are improper. Reconsideration, withdrawal of these requirements, and examination of all pending claims, i.e. claims 38-66 and 69-77, are respectfully requested.

To the extent the Examiner persists in the present Restriction/Election Requirement, applicants reserve the right to file a Divisional Application directed to the non-elected claims. Further to this, it is believed that independent claim 38 is in condition for allowance. Therefore at least claims 39-41, 48-57, 59-66 and 69-71 should be re-joined and considered by the

Examiner on the merits, once claim 38 is considered by the Examiner to be allowable. Applicants also reserve the right to petition the Examiner's Restriction and/or Election of Species Requirement.

Claim Amendments

Applicants have amended the claims in order to correct minor typographical errors, and to place the claims in better form for U.S. practice. The claim amendments are not being made in response to any statutory requirement for patentability, and have not been narrowed in scope. Instead, the claims have been amended merely to recite the subject matter therein more clearly.

Rejection Under 35 U.S.C. § 102

Claims 38, 42-47 and 58 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Meyn, U.S. Patent No. 5,269,721. This rejection is respectfully traversed.

The present invention as recited in independent claim 38 is directed to a device for converting a stream of living poultry, which fluctuates over the course of time, into a stream of living poultry, which is substantially uniform over the course of time, in a slaughter line. The device comprises a combination of elements including "an unloading station configured to unload the living poultry from at least one holder," "a connecting station configured to connect the living poultry to carriers" and "a conveying station configured to convey the living poultry as a stream of living poultry from the unloading station to the connecting station." In addition, claim 38 recites "at least one control device constructed to control the number of living poultry that is transferred from the unloading station to the conveying station or from the conveying station to the connecting station per time unit, in order to reduce fluctuations in the stream of living poultry." Applicants respectfully submit that Meyn reference fails to teach or suggest the present invention as recited in independent claim 38.

Referring to Meyn, this reference is directed to a method and apparatus for processing poultry. The Examiner asserts that Meyn anticipates independent claim 38 of the present invention. However, the Examiner's entire explanation of anticipation is as follows:

Meyn teaches an unloading station for unloading the poultry from at least one holder, a connecting station for connecting the poultry to carriers and a conveying station for conveying the poultry as a stream of poultry from the unloading station to the connecting station, and at least one control device is constructed to control the number of birds transferred to the unloading station to the conveying station. The conveying station as seen in the figure includes a number of conveyor device [sic] arranged in parallel and a number in series. Regarding claims 45 and 47, the control device reduces fluctuations in the stream of poultry.

At the outset, it is noted that the Examiner has merely paraphrased the present claims in the above. The Examiner has not used a single reference numeral to identify which elements of Meyn the Examiner considers to be the various elements of claim 38. The Examiner has also not cited a single passage in the Meyn reference to explain the Examiner's position. Therefore, it makes it very difficult to determine how the Examiner is interpreting Meyn to read on the claims of the present application. If the Examiner persists in this rejection, it is requested that the Examiner fully explain how the Meyn reference is being relied upon to read on the claims of the present application.

In any event, it is noted that Meyn is directed to an apparatus that processes poultry carcasses, not live poultry as in the presently claimed invention (see, e.g., column 2, line 37 where bird carcasses are described as being processed). The present claims have been amended to clarify that each of the elements is for processing live poultry and each of the elements is configured to unload, connect and convey, respectively, the live poultry. In view of this, Applicants submit that it is clear that the presently claimed invention is structurally defined as an apparatus that processes living poultry, not poultry carcasses.

With the device of Meyn, the poultry has been previously slaughtered. Therefore, none of the elements of Meyn are for processing live poultry as in the present invention. It is also noted that live poultry cannot be processed with the Meyn device. Assuming that the bird carcass 3 in the figure of Meyn is a live bird, as soon as the bird reaches the means to remove the entrails 6 on the processing apparatus 5, the bird would no longer be living. In view of this, any

of the elements downstream from the processing apparatus 5 would not be elements to process living poultry as in the presently claimed invention.

In addition, the Examiner asserts that Meyn discloses an unloading station. However, the unloading station of the presently claimed invention is recited as “an unloading station configured to unload the living poultry from at least one holder.” Since Meyn does not disclose a holder, it is not understood which element of Meyn the Examiner considers to be the unloading station of claim 38. Referring to the figure of Meyn, there is nothing illustrated upstream of the suspension conveyor 1, and Applicants do not believe that the conveyor 1 is an unloading station itself. Therefore, clarification of the Examiner’s position is respectfully requested.

Furthermore, the Examiner asserts that Meyn discloses a connecting station. However, the connecting station of the presently claimed invention is recited as “a connecting station configured to connect the living poultry to carriers.” It is not understood which element of Meyn the Examiner considers to be the connecting station. The conveyor 1 includes an element to support the poultry carcasses thereon; however, there is no station disclosed in the Meyn reference for connecting the poultry carcasses to the conveyor 1. Also, if the Examiner is already considering the conveyor 1 to be the unloading station, then it is not understood how the conveyor 1 can be both the unloading station and the connecting station. Clarification is therefore respectfully requested.

Moreover, the Examiner asserts that Meyn discloses a conveying station. However, it is not understood which element of Meyn the Examiner considers to be the conveying station. As mentioned above, Meyn discloses a conveyor 1. In addition, Meyn discloses a chain 8 and a discharge chute 13. However, it is not understood how any of these elements can be considered to be the conveying station of the presently claimed invention. Claim 38 recites “a conveying station configured to convey the living poultry as a stream of living poultry from the unloading station to the connecting station, the conveying station comprising at least one conveyor device.” In view of this, the conveyor must convey the living poultry from the unloading station to the connecting station. Since the Examiner has not identified the unloading station or the connecting

station in Meyn, it is difficult to understand which element can be the conveying station of claim 38. Clarification is therefore respectfully requested.

Finally, claim 38 recites “at least one control device constructed to control the number of living poultry that is transferred from the unloading station to the conveying station or from the conveying station to the connecting station per time unit, in order to reduce fluctuations in the stream of living poultry.” There is absolutely no disclosure in Meyn of any type of control device. In addition, it is clear that from the input at the upstream end of the conveyor 1 through the processing apparatus 5 to the downstream end of conveyor 1, there is no control of any fluctuation in the number of poultry carcasses. It is also disclosed at column 3, lines 3-7, it is stated “[t]he transportation velocity of the chain conveyor 8 equals the transportation velocity of the suspension conveyor 1, so that the entrails 7 move along synchronously with the respective birds 3 at the part of the chain conveyor 8, furthest from the birds 3.” In view of this, it is clear that there is no control of the number of poultry carcasses from an unloading station to a conveying station or from a conveying station to a connecting station as would be necessary to meet independent claim 38 of the present invention.

In view of the above, Applicants respectfully submit that the combination of elements as set forth in independent claim 38 is not disclosed or made obvious by the Meyn. Accordingly, reconsideration and withdrawal of this rejection are respectfully requested.

With regard to dependent claims 42-47 and 58, Applicants submit that these claims depend, either directly or indirectly, from independent claim 38 which is allowable for the reasons set forth above, and therefore claims 42-47 and 58 are allowable based on their dependence from claim 38.

In view of the above amendments and remarks, Applicants respectfully submit that claims 38, 42-47 and 58 clearly define the present invention over the Meyn reference relied on by the Examiner. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(b) are therefore respectfully requested.

Additional Cited References

Since the remaining references cited by the Examiner have not been utilized to reject the claims, but have merely been cited to show the state of the art, no comment need be made with respect thereto.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Paul C. Lewis, Registration No. 43368 at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: April 13, 2010

Respectfully submitted,

By 

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